



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,453	02/18/2005	Karsten Reihls	785-012125-US (PAR)	5072
2512 7590 07/07/2009				
PERMAN & GREEN 425 POST ROAD FAIRFIELD, CT 06824				
EXAMINER				
WHITE, DENNIS MICHAEL				
ART UNIT		PAPER NUMBER		
1797				
MAIL DATE		DELIVERY MODE		
07/07/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/525,453

Applicant(s)

REIHS, KARSTEN

Examiner

DENNIS M. WHITE

Art Unit

1797

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 June 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: none.
Claim(s) rejected: 1-12 and 17-20.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Lyle A Alexander/
Primary Examiner, Art Unit 1797

Continuation of 11, does NOT place the application in condition for allowance because: Applicants argue that the invention is as follows: "In a preferred embodiment of the present invention, the surface formation is configured as a single use article. A surface formation with several layers and a first layer with an ultraphobic surface, and a carrier layer, with the first layer being applied reversibly to the carrier layer, and the maximum local flatness deviation of the surface formation being 100 micrometers, preferably 20 micrometers on a length of 100 mm, is particularly suitable for this embodiment." It is noted that claim 1 requires that the surface formation includes a multitude of MALDI matrix points, on a sample carrier, and an ultraphobic surface applied reversibly on the carrier layer. The surface formation has a maximum local flatness deviation that is less than 100 micrometers over a length of 100mm. According to claim 1, the local flatness deviation can be interpreted as referring to the surface of the device. Applicants argue that the Beecher and Dreyfus regarding the local flatness deviation are comparing apples and oranges

The rejection in the previous office action points out that Beecher et al teach the ultraphobic layer is continuous and have a thickness for example of 1 micron. Therefore the local flatness deviation of the film layer would have to be less than 100 micrometers in order for the layer to be continuous. The locuna defines the spot where the MALDI matrix is placed on the probe. Beecher is silent about the surface flatness deviation of the MALDI matrix within the locuna and the MALDI matrix substance prepared by precipitation from the gas phase. Dreyfus remedies the local flatness deviation of the MALDI matrix and the precipitation of the MALDI matrix from the gas phase. When the MALDI matrix of Beecher is modified by Dreyfus having a thickness of 1 microns, the complete surface of the device ("surface formation") has a local flatness deviation of less than 100 micrometers. Therefore the limitations are met by the combination of Beecher and Dreyfus. Regarding the argument that the examiner is comparing "apples and oranges", it is noted that the substitution of the MALDI matrix of Beecher for the MALDI matrix of Dreyfus would meet the limitations of claim 1 because the "oranges" of the applicant are concerned with the deviation of the entire surface formation and the combination of Beecher and Dreyfus would define a device with a surface that is substantially flat and having a surface deviation that resides within the claimed range. Therefore, the combination meets the limitations of the claims.